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THE CITIZENS, THE STATE, AND OUR ECONOMIC SYSTEM

An address, at the Commencement of 1922, of Dickinson
College and the Dickinson School of Law, by Hon.

Robert von Moschzisker, Chief Justice
of Pennsylvania.

This ancient seat of learning, situated, as it is, in one of the most beautiful parts of Pennsylvania, has a wonderful attraction for me; so, when Dr. Morgan extended an invitation to address you, of course it was accepted. Then I cast about for an interesting topic, and finally decided to treat of the Citizen, the State, and our Economic System,—broad subjects for a comparatively short discourse, but very important to consider at this particular time.

You and I are privileged to live in a marked period of evolution; we are seeing old familiar, geographical,

social, political and economic lines changed and changing, probably as never before in the world's history. In the midst of such stirring events, the question naturally arises, What part shall we play? What can we contribute towards solving the problems of the moment and of the immediate future? These thoughts must come to every right-minded man, particularly to those of us who, through opportunity, either afforded or created, have been privileged to drink at the fountain of knowledge, and, therefore, are better equipped than our less fortunate brothers to grapple with the questions of the day.

We cannot all play leading parts, apt to win the plaudits of our fellowmen,—although these roles may be in store for some of you, who will step from this room into the world of endeavor; but every one of us can study to gain an understanding of the problems at hand, and, in our own way, within our own sphere, of influence preach the truth, thus helping to overcome some of the social and economic heresies with which the period is beset. One of the chief of these, I fear, is a prevailing notion that the State must care for, shelter, and even nourish its members, constantly regulating and guiding their personal and business conduct.

This is not only an erroneous idea, but a most harmful one to the individuals who make up, in the aggregate, that mystical something, which, for want of a better name, is termed "the State."

What is this thing we call the State, and what are its true obligations? The old-fashioned conception of the State pictures a sovereign power, typified by a governing head of some sort, possessed of a divine right to exact service from every subject, and, as a consequence, owing a return of paternal care. This is not a true outline of the general conception today, and surely it presents no correct picture of the American idea. To us, the State is the official machinery of organized society,

to formulate and administer the law of the land, for the welfare of all the people.

I use the term "official machinery" advisedly, for the political State is but a part of the mechanism which society must depend upon to keep its wheels moving steadily and with security.

There is also the organized church, which most modern schools of thought dismiss from their calculations with small ceremony; yet the influence of this institution, working its way through many forms of religion, has for centuries past done more to control the individual and collective actions of civilized and semi-civilized men than any other one element. While the church may seem to lack old-time vigor just now, yet it will go on, always a great force, and eventually come into its own,—not to control the political State, for that is an undersirable condition of affairs,—I mean it will establish its own due influence on the life and conduct of the individuals who compose the State, and this will be accomplished through the medium of proper teachings and the general recognition that all law and power emanate from on High. But, aside from strictly religious considerations, the church—I use the term in its broadest sense—even to-day has a moral and social influence, which, to my mind, is incalculable, and he who dismisses it lightly, when considering the problems of organized society, makes a grave mistake.

Then there are the powerful forces of business, industry and labor, all of which, of recent years, have shown a progressive tendency toward stronger and more compact organization for self-preservation and government; and, with us in America, if not elsewhere, there is another great influence upon the conduct of men, both individually and en masse,—the mighty body of fraternal and charitable associations existing throughout the land, which is ever on the increase.

Each one of these forces,—and many other compara-

tively minor ones, of which I cannot now take time to speak,—has its own place and particular function in the workings of modern society. While it may prove expedient, and at times necessary, for the State to exercise some control over such groups, when their activities affect adversely the material or economic life of the people, or threaten the welfare of society as a whole, yet, even then they should be interfered with to an extent only that may prove absolutely necessary, and, as a general rule, their functions ought not to be taken over by the State itself. In my opinion, under ordinary conditions, no regulation of the economic and social life of the people, not actually required, should be indulged in by their government.

I leave out of account times of war, for then many rules for individual conduct must be made and a host of activities controlled that no government should meddle with under normal conditions—democracies instinctively and inevitably become autocracies in times of war; in periods of peace, however, the State ought not to attempt any general supervision over business or undue restraint of the social life of the people; these powers of control should be exerted only on those rare occasions when the public welfare imperatively demands their exercise.

You may ask, why? First, because each step in the direction of such general supervision is a move toward the reorganization of society along socialistic lines, and this, unless all history fails, is bound to prove antidemocratic. Such a scheme of government naturally leads to an all-regulating overlordship by those in control; for, under the socialist State, society, to regulate its vastly increased public affairs, must have in control men of iron will, "bosses" in the grossest sense of the term, who can brook no independence of thought or action—since man, voluntarily working in combination with his fellowmen, is not competent to govern such an all-power-

ful and complicated organism as will be found necessary to carry on successfully the political, industrial, business and social affairs of a people. Next, any prolonged attempt at running such an organization, instead of training a great body of officials to the required capacity, will be more apt to have the effect of breeding wholesale corruption, destroying personal ambition among the masses, deadening individual initiative, and moulding all men into a common form. Moreover, unrestrained governmental interference with the business life of a people almost invariably leads to efforts at control of economic laws; and these laws, like the mills of God, grind slowly, yet they grind exceeding small all who are so bold as to attempt to turn them from their natural course. In short, when the State undertakes to regulate to an undue extent the relations and conduct of those who compose it, and to take out of the hands of a people the personal management and control of their private property (a dangerous doctrine which is being widely advocated at this time), it enters upon an experiment which, at man's present stage of development, steps beyond the range of possible accomplishment and is bound to lead to demoralization in industrial life as well as the drying up of individual initiative, thereby bringing poverty and distress to the masses, instead of the contentment and happiness which they seek.

To come back to a controlling thought, already expressed: after all is said and done, the State, like every other human organization, must be conducted by men, and it is impossible to find any great number of men having the physical strength, moral caliber and intellectual capacity required for work such as would be called for by a socialistic reorganization of society; this, to my mind, is enough in itself to forbid the experiment.

Here, in America, until recent years, we have studiously avoided overcrowding the State with duties the performance of which would harass the individual in his

private or business pursuits, yet we all know how difficult it has become to get competent public servants to administer our comparatively simple government, particularly for the leading positions, requiring executive ability of a high order. The more duties we crowd upon the State, the greater this difficulty will be; it is quite possible to force it to the breaking point, and then—chaos!

It has been said that the duties of the State are to prevent crime and protect contracts; I should say its chief end is to render possible the substitution of law and order for force and discord. This is the real object for which the State exists, but the fewer laws, to accomplish that purpose, the better for all concerned; and, even in the field of making laws, much should be left to the discretion of the various groups of inhabitants who combine, in particular lines of endeavor, or for other worthy purposes—the supreme power insisting simply that no group shall make laws for its own government which are antagonistic to, or inconsistent with those ordained by the State itself.

The thought just voiced is not new, nor does it denote the radical thing known as syndicalism; for the syndicalists, as I understand their doctrines, would carry the idea of class autonomy to such an extreme as, in effect, to do away with the State. The plan I have in mind prevails with us in Pennsylvania at the present time, to a limited extent; for instance, any organized social unit, such as a beneficial or a fraternal order or a general ecclesiastical body, may make its own rules and regulations, setting up its own tribunals to administer them, and, so long as the rules and regulations (which are really laws to those to whom they apply) do not transgress the general laws of the State, our courts will sustain the judgments of these private tribunals, that afford relief and adjust difficulties between such organizations and their members or that relate to other matters properly covered by the laws of the body to which a com-

plaining member belongs. Furthermore, the law of the land requires that the members of such bodies ask relief of their own tribunals before applying to the courts of the State.

As the population of a State increases, and its social problems grow more complicated, there is every reason, to my mind, why the idea of group self-government should be encouraged; I submit the thought, for your consideration, as an antidote to the existing tendency toward over-centralization of regulatory powers in the State itself.

While I believe the present attitude is to expect too much of the State, yet I entirely disagree with those who would bring government to an irreducible, impotent minimum, without character or force; these people are anarchists or near-anarchists. One hesitates to use the term, for the mind immediately associates it with unkempt, dirty men, red flags and bombs, rather than with the large school of so-called philosophical thinkers, who really believe that mankind would be happier, and the world more at peace, if there were no organized governments or prevailing rules of law. The latter are the respectable, but none the less dangerous, class I have in mind.

No one who has had to do with public life and has seen the minute workings of one important department of government—the administration of law in courts—as I have for many years, and who knows by actual experience how essential the machinery of the law is, to keep men from one another's throats, can have any real doubt about the absolute necessity for a well organized, properly functioning State.

Of course in conducting such a State, there are times and conditions which call for and warrant regulatory laws affecting the business and social life of the people; but what I wish to warn against is the attitude of mind that tends toward a system that would make the indi-

vidual depend on the government for assistance and guidance in his business life and general course of conduct, instead of self-reliant, as he should be, and has been in the past, so far as our country is concerned. This characteristic self-reliance is a distinguishing mark of the American, so much so that it is rapidly acquired by the intelligent immigrant; it must not be lost by putting upon the State those things which the people, in groups or otherwise, ought to do for themselves.

We constantly hear attacks on our existing economic system, and there is a great propaganda throughout the world to substitute something else in its place, even by revolution if necessary, the most persistent demand being for control of the industrial and business life of the people by the State itself. Social and economic systems change by gradual development, and this is as it should be. In a formative state of society, we had the feudal system, which grew into the wage system, and, as wealth increased, the present so-called capitalistic system came about. It did not, like Minerva, spring full-armed, out of the head of a mighty, selfish Jove, as some seem to think; on the contrary, it is the result of years of growth and, unless put aside for something else, bids fair to go on, slowly, but surely, forming and reforming in accord with the demands of the period which it is serving.

Under our present economic organization, as soon as one earns enough by personal effort to keep himself and those dependent upon him, and to lay aside a surplus, and this surplus is invested so as to produce or distribute something desired by the people, thereby building up a further surplus, that man is a real capitalist. When this capitalist joins his earnings with those of others, so that the whole is sizeable, and part of the net earnings of this bulk are from time to time reinvested, it gradually becomes sufficient to render possible the marvelous industrial and commercial achievements of the present day.

We see these accomplishments on every hand, in the

vast means of production and distribution which meet the material needs and desires of the people; and while many of us prefer the joys of intellectual life, rather than those which come from a business career, yet the industrial activities of the age, by example at least, spur every one on to the top notch of effort, no matter in what field he may be working, and they have a tendency to affect favorably the compensation of those engaged in the professions, sciences and arts; the toilers in these higher fields of endeavor are no longer dependent, as of yore, on governmental support or the kindness of a private patron, but can command a living by their work. Finally, the system offers lavish rewards to the fittest of those employed in business or industry, with a fair chance to others, of ordinary ability, to gain a livelihood or more, according to their worth.

There is one class, however, which, in the rise to wealth and power, we have rather sadly, and very foolishly, overlooked, and that is the devoted and all-important teacher in our schools and colleges,—those who have this grave responsibility of training the coming generation; though, from all I hear, there has been a public awakening on this subject, which is bearing fruit. One cannot too strongly emphasize the dignity of this high calling, and the substantial appreciation which is its due.

There was a time when the ordinary man in the ranks of capitalism did not get his fair share either of the direct monetary returns from the system or of the leisure it afforded to others; but this condition is rapidly disappearing, the masters in command now recognizing, to an ever-growing extent, the rights of those who labor in the ranks to a larger share of the direct and indirect returns of their work, and, in many instances, to a share in the management which produces these returns, as far as the management affects the lives of the workers; this is a move in the right direction, which should be encouraged. Then, again, of recent years, working conditions

and, where the employer has control, living conditions, have been vastly improved; at the same time, the hours of labor have steadily diminished.

Profit-sharing, also, is coming into vogue, and I hope, with the new idea of representation in the management, it may prove to be a development that, in the end, will solve those difficulties which we broadly term "labor troubles," the adjustment of which, by any juridical means has puzzled and is puzzling the minds of our best thinkers. I do not despair but that even this problem may be worked out; at least earnest efforts are being made in that direction, and, when some master mind finds a fair and practical way of constraining obedience to a decree against the employee, other than a forcible attempt to compel him to labor, we shall be on the way to a proper solution, but not before. Harder questions than those presented by the problem before us have been met and answered in the history of the world; and, in due course of time, should profit-sharing and co-operation in management prove a success, capital and labor may mutually set up their own tribunals, fixing their own penalties to enforce their own decrees, and thus avoid the necessity of judicial adjustments by the State, with all the complexities which that plan presents. Many years, and the trial of many schemes, may be required to bring the suggested programme to success, although in the end the desired result may be achieved so naturally that every one will wonder why it did not materialize sooner. That is the way great things often come to pass—seeming to develop suddenly; but, when this happens, it is usually the result of much prior cogitation by a host of thinkers—generally of a scientific turn of mind—whose ideas, through repeated expression, materially affect those who control the world of action, even though, all the while, the individuals thus influenced may lack conscious appreciation of the fact that impressions are being made upon them. This being true, as it un

doubtedly is, each well-ripened thought has real value, when contributed to the solution of momentous problems like those under discussion.

Just at this point, apropos of my remark that some master mind may find a workable method of judicially adjusting labor troubles, let me interject that by "master mind" I did not contemplate one engaged in the activities of industrial or business life; for, proficient as these men are in their own department of labor, most of the serious problems which concern the mass life of the people, be they in the applied arts or in the field of economics, are solved, not by those actively engaged in the production or use of the thing or method discovered, but by students and thinkers—men in closets, who make the great tools of the world for the practical men to handle.

These closet thinkers, or students, are those previously referred to as men of a scientific turn of mind. It is the practical men, however, who must be depended upon to handle the tools the others produce; and a distinctively good feature of our present system in the natural division of its vast activities into various units, which steadily call forth and educate an army of high grade practical workers, trained to management, thus keeping the standard of efficiency high. In this respect, the plan is much superior to one that would enforce the doctrine of centralization, or nationalization, of industry, the tendency of which, as I have said before, is to diminish the supply of managing talent, and thus lead to demoralization of production and distribution. Incidentally, this tendency should be kept in mind by those in control of American business, so they may see to it that, in making combinations, too great a degree of centralization is not indulged in; but we may assume the mass sense of the people, as expressed by their representatives in government, will always impede any attempt at undue centralization of private property, so long as the existing economic scheme continues. To this extent, I entirely agree

that interference by the State is not only justifiable, but also sanctioned by a long line of English precedents.

Of course the system under which we operate has developed, and no doubt will continue to develop, flaws and sources of irritation; but these can be, and are, constantly eliminated or remedied. For instance, when it was found that great monopolies were becoming a menace to the public welfare, legislation met the condition thus created, such as the anti-trust laws, the interstate commerce laws, and the numerous public service commission acts; and, when it was found that the workmen engaged in our vast industrial life, and those dependent upon them, were not properly cared for in cases of injury or death, workmen's compensation laws were enacted to cope with this condition. We are now engaged, by legislation and otherwise, in an effort to cure the evils of fictitious values so often given stocks and corporate securities. In the field of tariff legislation, it often happens that those advocating protection, instead of seeking to get Congress to consider whether the rates sought are calculated to benefit the country as a whole, which is the true criterion, avowedly ask special benefits for themselves; rates determined on that basis present a clear abuse of power. This is coming to be understood, and, eventually, no doubt a way will be found to eliminate it.

All of the curative efforts to which I have called attention present proper exercises of the power of the State to meet situations brought about through the operation of our economic system, which, either directly or indirectly, adversely affect the general welfare of the people; and, under our form of government, as it has developed, the right of the State—by virtue of what is known as police power—to make all changes required for the health, happiness and welfare of the people, is now firmly established.

It looked for a while as though the so-called swollen fortunes of the very rich might develop into a public

evil, but the present income and inheritance taxes, with our habit of deviding estates among all the heirs, instead of holding them together in the hands of a favored one, have, I believe, effectively dissipated that danger, and the day of the overrich is rapidly passing, although we still see vulgar displays of recently acquired wealth around us.

I can well understand how many persons, of little means, with no luxuries in their lives, are filled with an envy that engenders hatred, when they watch the display of wealth indulged in by some, who have either legitimately or otherwise gathered in the prizes of capitalism; but, as against this offensive class, who use their fortunes in a purely selfish way, there must be offset the other class of rich persons, who look upon wealth as a trust to be administered for the public; these are the men who build churches, support art galleries, open parks, found libraries, aid music, establish hospitals, encourage research, and substantially recognize good work or noble deeds on the part of others. The wealth in the hands of this large and growing class is rapidly returned to the people in well-administered ways; in fact, in many instances, it is better, more intelligently and less selfishly, administered than it would be by the people themselves, if they had it in their own possession. When we think of the vulgar, objectionable rich, produced by the system, we must also give a thought to the great creators and distributors of wealth like Mr. Westinghouse, Mr. Carnegie and others of their kind, and to the many possessors of small fortunes who live quietly and help their fellowmen wherever they can; but more particularly, we must remember the vast army of wage earners, who, through the operation of the system, in normal times are kept constantly employed; and in this connection, we must recognize that most of the wealth of the present day would not exist if it were not for the combination of the brain worker and the brawn worker, who, together,

really create wealth out of material resources that otherwise would remain dormant.

In considering the part contributed by the brain worker to the combination just mentioned, and the compensation the leaders in that department retain for themselves, it must be remembered that the nature of men engaged in this kind of construction work often demands an expensive manner of living, in order to function properly. I am told that the great Mr. Westinghouse, the working of whose mind gave fortunes to many, and furnished employment at good wages to thousands, asserted repeatedly that, without a private car to travel in, and homes at several points, to make his life perfectly comfortable, it would have been impossible for him to do his best work; which was no doubt so, for he was a true man, and, in his own way, a simple one, but not one to be judged by ordinary standards. Men of Mr. Westinghouse's caliber will always command a very high return from their labors, but my prediction is that, from now on, those at the top will get proportionately less, and those in the ranks proportionately more, from the fund of wealth which they create in common.

These men of genius and those of the normal type constitute the personnel of the industrial and business organization under which we live; together, they have brought the existing system to its present state of success. The question is, Shall they continue to work in combination along established lines, or look for other ways? During the titanic struggle which recently ended, we became accustomed to taking chances—regardless of the future—on all sorts and kinds of changes; this attitude was natural and even essential to those times, for such a state of mind had to prevail or the war could not have been waged successfully. In those days, we "scrapped" material things with a heedless hand, and, almost recklessly, abandoned old ideas to experiment with new ones; now a time has come when we can ill afford to

discard anything until it has fully served its purposes, and certainly it cannot be said that our present industrial and business organization has reached that point. In other words, there is no good reason to believe we have come to the point where capitalism can be put aside with advantage; nor that there is in sight a worthy successor to this system—founded on the creation, private ownership and control of property—with its rich prizes ever in sight, for those who fit themselves to strive for them, and lending, as it does, a constant incentive to personal effort.

We must remember that an appeal to the selfish instincts of man, through substantial rewards to be gained, hard and materialistic as it may sound, is a chief incentive to material accomplishment, and, no matter what the form of government or economic system, the work of production and distribution must be done by the people themselves.

Production, distribution and consumption are the main factors in all industrial schemes; and since it is the people who use the output, the plan which best tends toward large production and efficient distribution, helps each one in his capacity as consumer. This is a consideration of serious moment when we contemplate a departure from our present system, particularly if we think of agreeing to the substitution of a purely centralized one, such as is persistently urged by those who, because of existing defects, most clamor for a change.

It often happens that a comparatively small, but ugly, blemish on the exterior of something of real value so prejudices one that, without deeper consideration, he will unjustifiably condemn and abandon it as a whole; no doubt our system has many such blemishes. Thoughtful educated people ought to endeavor to understand the problems raised by these defects, and to seek proper remedies; but, at the same time, they should discourage all efforts to break down the existing organization of Society—the product of the experience of ages—under

which we have grown strong, happy and prosperous. What I mean is, we should find ways to remedy such faults as the system has, rather than encourage thoughts that contemplate a radical change in the present methods of conducting our affairs; for, if nothing worse, such a substitution would, of necessity, require us to endure all the sufferings which are bound to come through experimenting with unknown forces; and that these can be great and unendurable is shown by Russia's experience.

Just at this time most of the thinking, writing and talking on the subject in hand is being done by those who do not believe in our institutions; principally, I believe, because they have not been able to take their places in society as now organized. These people would do no better under any other system. What we need is that those who have read and thought on social and economic subjects, and who have convictions of their own in favor of our kind of government and our general plan of business and industrial life, should speak out and meet the attacks of those who do not believe in them; and we need a more general interest in the affairs of the State by those who, in their individual lives, have shown themselves competent to gather the best fruits of the existing order. By "fruits" I do not mean the accumulation of wealth and power, but rather the achievement of a reasonable degree of worldly prosperity and spiritual contentment.

Some people point to the prevailing business depression as evidence of defects in the existing order; but this is entirely unjust, for all must agree that it is not fair to judge any economic plan by the results obtained under extraordinary conditions, brought about by an unprecedented world upheaval such as we are now passing through. If this is to be the standard, however, then I claim that, considering the adverse conditions, the results obtained by the working of the capitalistic system, here in America, are remarkably satisfactory.

Please do not suppose, from anything I have said,

that I believe the sum total of virtue lies in our present political or economic methods; on the contrary, it is my belief that we can gain much by studying all advanced schools of thought, and by borrowing therefrom whenever convinced they present points of merit. This course has been adopted in New Zealand, and, to a less degree, in Australia, with varying opinions as to its success.

It does not do to "stand pat," since that means an end to all progress; and, when property rights come in actual conflict with human rights, always support the human rights side of the controversy. For instance, if an industrial or business enterprise cannot pay a living wage and succeed, or if such an undertaking requires the use, to a harmful extent, of child or female labor, it had better fail, no matter how much property may be involved; so, if the success of any business venture is likely to prove harmful to the morals or best interests of the people as a whole, the fact that it may serve to create property is not a sufficient saving grace. These principles are now recognized, and matters such as those just mentioned, with others in the same category, are controlled by a course of regulation that has become an established part of our system; this, when kept within due bounds, is an excellent thing,—however, within such limitations official interference must be kept, or, experience shows, it rapidly degenerates into an evil.

It is my conviction that, as a general rule, the regulatory power of the State should be exerted only as a last resort; and, in each instance, when the purpose of its use has been fully served, the assertion of the power should be withdrawn in that particular field, the principle being constantly kept in mind that those who compose our economic, industrial, trade and business life ought to be allowed and encouraged to manage such affairs to the greatest possible extent, their control to be interfered with only when an abuse of power, detrimental to the people as a whole, plainly appears, the function of the

State in this respect being solely to serve the public welfare, not either to foster or retard individual development,—that should be left to other agencies.

The thought may have occurred to some of you that, during the course of these remarks, I have intermingled, and, possibly confused the political and economic systems under which we are working; but, while separate, the two have come to affect each other so intimately, that, to a very large extent, they must be considered in common.

You may also think from my address today that I have a rather restricted idea of the State. My conception is briefly this: The State is an organization set up by the people to preserve liberty under law, to assist, where necessary, in the control and management of their common affairs, and to serve as a medium by which, in case of threatened or actual danger, their sentiments of loyalty to country may be brought into effective play for the general defense. In passing judgment on this definition, you must not confuse State and Country. One owes it to the government under which he lives to take an interest in public affairs, even to a reasonable participation in so-called practical politics, to endeavor to keep the State on the right track, so far as its laws and institutions are concerned, and to carry on an ordinary life under those laws and institutions. Duty to Country is a larger thing: a man's country embraces the national family of which he is a loyal member; it comprehends the land where one lives, or, if away, to which the heart clings with the hope of return; it is home, in the largest sense of that beautifully comprehensive word; it is the place whose traditions one shares, and for which, if need be, he will offer up his fortune or even life itself.

Almost a century and a half of history have shown that, with an American audience, it is not necessary to dwell on the theme of loyalty to country; but the obligation of the State toward the individual, and his duty to it, are matters which the trend of events leads me to think we

can consider with profit. My message may be summed up thus: First, do not look upon the State as a universal doctor; if, either as an individual or as a member of a group, you need an economic stimulant or social remedy, try to cure yourself before rushing to the State for aid; constantly remember that the State is created for the benefit of the whole body of people, not for the benefit of special individuals, groups or classes. Next, it is every educated person's duty, when he takes his place in the world of action, to give thought to the problems I have mentioned today; he should endeavor to understand, at least in a general way, the governmental institutions and economic systems of the world, past and present, likewise those proposed for the future. Finally, before condemning the institutions and system under which his country has lived and prospered, and committing himself to some experiment never tested in the laboratory of experience—or, when tested, found wanting—he should hesitate long, to assure himself of the right of his course. The economic system which has grown up and taken its present form side by side with our political institutions, sharing with them much common history and tradition, is entitled to an examination of its faults and virtues; and if one is convinced that, on the whole, it is calculated to serve society better than any substitute offered in its place, then it is his duty to stand forth armed with conviction, ready to do battle for his belief. The kind of government we possess has been centuries in the making; its germination was in the England of a period prior to William the Conqueror. This political system has developed and changed, slowly but surely, according to the necessities of the times it was serving, the roots, how-

ever, always remaining embedded in liberty and liberalism. We must see that these roots are not plucked up, nor the tree allowed to wither; equally with this, we must have a care that the branches are pruned, as needs be, so they shall grow in the way most useful to mankind as a whole. Such are the duties that I hope my message may help you to realize.

THE ILLIMITABLE AMENDABILITY OF THE FEDERAL CONSTITUTION.

Those who in 1787 and 1788, fashioned and gave existence to the Federal Constitution, undertook to prescribe modes by which it could be modified. Modification might be in the direction of reducing the powers of the Central State, and correspondingly increasing those of the component states; or it might enlarge the powers of the United States and diminish those of the several states. Recent experience has brought home to some, the fact that the power of amendment may result in a very serious diminution of the functions of the local governments; and indeed that the process might continue until the states would retain little power of any sort, so that their maintenance would become foolishly expensive.

Some who wish to avert this extinction of the important powers of the states by the process of amendment, are in quest of a test by which permissible amendments may be distinguished from the impermissible. An attempt was made to discover this test in the address before the late meeting of the Pennsylvania Bar Association by its President, Hon. A. N. Holding, Esq. A somewhat careful perusal of this address has left as uncertain as to the limitations of the Amending power which in his opinion were contemplated by the framers of the Constitution.

The effort is made to discover in the definition of the word "amend" a test. Approving the amendments preceding the 18th that speaker remarked, "Every amendment to the Federal Constitution prior to the 18th has been within the above rules (suggested by words of former Attorney-General Cassidy and by an extract from an opinion of the Supreme Court of the United States)

that is, it has been germane to and within the scope of the existing provisions of the Constitution and its purposes." But, as the Constitution was a scheme for creating a federal state and transferring to it certain powers which theretofore had been exercised by the several states, it is difficult to see how another shifting of power from the states to the federal state deserves to be branded as not germane to the existing provisions of the Constitution.

Originally the social status of the negro was regulated in each state by the state, but the 13th Amendment forbade the existence of slavery "within the United States or any place subject to their jurisdiction," and so destroyed one of the important police powers of the states.

Prior to the 14th Amendment, the states could, in the exercise of the police power, deprive persons of life, liberty or property, in ways that many thought "without due process," but that Amendment has forbidden the making or enforcing of any state law having such results, and has given authority, frequently exercised by federal courts, to annul state legislation which had previously been within its competence.

States had frequently passed laws which were believed to deny to persons "the equal protection of the laws," but that amendment has been held to annul such laws.

One of the fundamental conceptions of state power, was that it could withhold the suffrage on account of race, color, or previous servitude; but the 15th Amendment has swept away this power of the states, and, in whatever circumstances a white man has the power to vote, conferred that power on black men. What more serious interference with state self-government can there be, than that which forces on it an electorate from which it reluctates?

It might be plausibly argued that since its senators are in a sense its agents and its representatives, it should

have the right to say how they should be selected. The constitution they ratified, gave the selection of senators to the state Legislature, but a majority of three-fourths of the legislatures of the states have by the 17th Amendment transferred this power, even in the states that did not vote for the Amendment, from the legislature to the mass of the voters.

What more fundamental power is there, than that of defining in what class of persons of a state, the power of voting in it shall be lodged. It remained with each state (excepting in some of the southern states during the era of reconstruction) for 130 years. Then the legislatures of three-fourths of the states, deprived the people of the other fourth of the states, by the passage of the 19th Amendment, of the power to confine the suffrage to males.

Instead of arguing *a priori*, as to the scope of the amending power, let us examine the article which conveys it in the Constitution.

"The Congress," says the 5th Article, "whenever two-thirds of both houses shall deem it necessary, shall propose Amendments to this Constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing Amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution when ratified by the Legislatures of three-fourths of the several states, or by Conventions of three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of the first Article, and that no state, without its consent, shall be deprived of its equal suffrage in the senate."

The adopters of Amendments, under this provision, (ratifies is the word) are the legislatures of three-fourths of the states, or conventions in three-fourths.

Congress is to say, with respect to each particular amendment, by which of these methods, it is to be ratified. Congress could not well provide, with respect to the same amendment, one mode of ratification in some of the states, and the other mode in the other states.

But, the amendments must be proposed by some body. Congress itself may propose specific amendments, and send them to the states for ratification.

Congress may not propose any. Two-thirds of the legislatures may petition Congress to call a convention for the purpose of deciding whether to submit amendments, and to draw them up. If the convention submits none, the amendatory process is aborted. If the convention agrees on amendments, they must be sent to the legislatures of the states, or the state conventions, and they are adopted when approved by three-fourths of the legislatures, or of the conventions.

Up to this point the framers have dealt with the powers of amending, and not with the character of the amendments. But, the question was entertained, to what extent might the Constitution be changed or amended.

The members of the convention attached great importance to two things. One was the right of citizens of the states, as against the new government, to continue to receive slaves from abroad, for a period of twenty years. "The migration or importation of such persons as any of the states now existing, shall think proper to admit" says the 1st clause of section 9 of Article 1, "shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."

The other thing was expressed in the 4th clause of Section 9 of the 1st Article: "No capitation or other direct tax, shall be laid, unless in proportion to the Census or enumeration hereinbefore directed to be taken."

The members of the smaller states would not have

agreed to the Constitution unless it had provided for equal representation of the states in the senate. The power of amendment resided in three-quarters of the states. If it were applicable to everything the prohibition of importation of slaves before 1808, or the imposing of direct taxes without relation to population could be removed and the equal voice of the states in the senate could be abolished. Hence, amending in these respects was made impossible.

The attention of the convention was then directed to the possibilities of the amending power, and the things which were intended not to be within that power were carefully specified. How feeble, then must be the argument that the framers and ratifiers intended that other changes should be impossible.

The address referred to attempts to distinguish between prohibitions, etc. which are constitutional, and those which are legislative. The legislative provisions, it argues, should not and therefore may not be adopted as are constitutional amendments. But, unfortunately no palpable test is suggested for determining whether a proposed provision is legislative or not. Several of the amendments are as legislative in character, as is the 18th Amendment. To prohibit A holding B in bondage (13th Amendment) is as legislative, as prohibiting the sale, manufacture or transportation of intoxicating liquor.

It is undoubtedly true that everything that three-quarters of the states disapprove they should not prohibit in the other states which do not disapprove, but that duty of abstention from exercising a certain power is not a denial of the power. The states by entering into the covenants of the Constitution have agreed to be governed by the will of a three-fourths majority of the states, if expressed in the constitutional mode.

The Supreme Court of the United States has recognized the constitutional obligatoriness of the 18th Amendment (*Anchor Line vs. Aldridge*, collector of Customs,

Advance Opinions, W. S. Supreme Court, June 15th, 1922) and individual opinions as to it, are irrelevant except in an effort to effect the amendment of the amendment out of existence.

The policy of the 18th Amendment may have been wise or unwise. Three-quarters of the states with the concurrence of Congress, have a constitutional right unwisely to modify the Constitution, and thus thrust the results of their unwisdom on the minority of wise states.

While it is true that "legislative enactments" are taking the form of constitutional amendments, and while, as the address referred to says, if the people permit such amendments, "we must expect the police power to be in part and eventually wholly taken from the states," we must remember that the likelihood that three-quarters of the states will be willing to divest themselves of all their police power, by transferring it to the national government, is not very great. Each state may be reasonably comfortable in realizing that jealousy of the process of spoliation of their powers is shared in by all the states, and a power which three-quarters of the states are ready to surrender, is not a power of which the few remaining states would greatly regret the loss.

The loss of control of the liquor business is as keenly felt, perhaps, by large numbers of the citizens of the states that ratified the 18th Amendment, as by citizens of the non-ratifying states.

BOOK REVIEWS

Cases on the Law of Bills and Notes by Howard L. Smith, Professor of Law of the University of Wisconsin and Wm. Underhill Moore, Professor of Law in Columbia University. West Publishing Company, St. Paul, Minn.

No two compilers of cases on any subject will coincide in their selections, in a majority of instances. It is therefore sometimes difficult to compare case-books and to pronounce of one that it is better than another. The book we are reviewing, is commended by the character of the gentlemen who have compiled it and of the general editor, Wm. R. Vance, of the American Case Book Series, and by the reputation of the West Publishing Co., the publishers. The book has been in use in a considerable number of law schools, and will be in use in the Dickinson School of Law. It covers 800 pages and contains a large number of the famous and significant cases, on the subject of Negotiable Instruments. We know nothing better, and hesitate to say that there is any other compilation of cases on Bills and Notes as good. Students or lawyers desiring a convenient repertory of the decisions on this interesting and important subject, would do well to possess it.

Cases on International Law principally selected from decisions of English and American Courts, by James Brown Scott. American Case Book Series. West Publishing Company, St. Paul, Minn.

This is one of the most important volumes in the American Case Book Series. Its editor is an authority of the first order. The range of his selections is very extensive. Most of the interesting and decisive adjudications of the English and American courts on international questions, are included. The work, covering 1200 pages, is divided into three parts, and it has three appendices, containing extremely valuable material. Part 1 deals with the rights and duties of nations in time of peace. Part 2 treats of compulsive measures or redress in time of peace; and Part 3 considers rights and duties of nations in time of war. Appendix 1 reproduces the Covenant of the League of Nations, and exhibits the statute for the permanent court of international justice provided for by Art. 14 of the covenant of the League. The 2d Appendix embraces the Declaration of Paris, the Declaration of St. Petersburg, the Declaration concerning asphyxiating gases, concerning expanding bullets, etc. The third appendix contains sundry orders in

council. The collection of cases is prefixed by an interesting preface in which the author unfolds his views as to the nature of international law. The work can be unreservedly commended, as a library of the important adjudications by Anglo-Saxon jurists on the most interesting questions that arise between nations.

The Problem of Proof, especially as exemplified in Disputed Document Trials, by Albert S. Osborn. Matthew Bender & Company, Albany, N. Y., 1922.

The importance of the theme of this work is indisputable. One of the most unsatisfactory chapters in the law of Evidence, is that which deals with the genuineness of documents. The courts very reluctantly reached the opinion that men could by study and systematic observation, become expert in the detection of forgery, and that their expert judgment could be of value in the investigation of documents. That period of obscurantism has largely passed, with the aid of intelligent judges, and of legislatures not afraid to question the principles, more or less unsatisfactory by which the courts had chosen to bind themselves. The author of this work has made a scientific study of chirography, and has discovered important tests for determining whether a document is genuine, or simulated and forged. A mention of a few of the titles of the chapters will suggest the scope of the book, such as Preparation on the facts, obtaining standards of comparison, the aid of the specialist, the specialist as a witness, photographers in disputed document cases, cross-examination from the standpoint of the witness, cross-examination from the standpoint of a lawyer, memory and the proof of facts, circumstantial and fact evidence, in disputed document cases; disputed type-writing problems, from blindness or defects of sight in relation to the problem of proof. A notable introduction by Prof. Wigmore, the leading American authority on Evidence, calls attention to the chapter on Advocacy, calling it "my favorite," and saying "I would like to have written that chapter myself,—only I could not. It should be read aloud every year before every law class."

We most heartily recommend this book to lawyers and students of law.